IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 960 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAJI BHULAJI THAKOR

Versus

STATE OF GUJRAT

Appearance:

1. Criminal Appeal No. 960 of 1994
MR NITIN M AMIN for Petitioners
MR SS PATEL, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1. This appeal has been preferred by the present appellants who were original accused in Sessions case no. 163/1993 to challenge the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge Mirzapur, Ahmedabad (Rural). They have been convicted by the learned Judge for committing offence under Section 302 of the Indian Penal Code (for short 'IPC') and they have been sentenced to suffer R.I. for life and to pay fine of Rs.500/-, in default of payment of fine, further R.I. for two years. They have also been convicted for committing offence under Section 307 read with Section 34 of the IPC, but no separate sentence has been awarded for the said offence.

2. It is the case of the prosecution that the present incident took place on 8th July, 1993 at about 8:30 in the morning. There is a temple situated on the outskirts of village known as Andhareshwar temple. Agricultural land bearing survey no. 515 is also situated just adjoining to this temple. It is the case of the prosecution that in respect of this land, there is a dispute between the appellants and the deceased who happened to be a Pujari of the above temple. A litigation in respect of the same was pending in the Court of law at the time when the incident took place. It appears from the record of the case that land admeasuring 2 acres and 10 gunthas of survey no. 515 was mortgaged with the appellants whereas, part of the same survey number admeasuring 2 acres and 14 gunthas was in possession of the deceased. It is the case of the prosecution that Pujari was cultivating the land in his possession.

2.1. Further the prosecution case is that on the day of incident the appellants entered the field of the deceased and they started destroying Bajra crop and at that time the deceased alongwith his disciple Abhayram came there and asked the appellants not to cause damage to the Bajra crop and to leave the field. As a result of this appellant no.1 inflicted a Dhariya blow on the deceased. The blow was aimed at the head but it fell on the back of the deceased. Immediately, thereafter, appellant no. 4 also delivered a blow with Dhariya on the head of the deceased. Seeing the assault, Abhayram tried to intervene. At that time, appellant no.3 gave blow with crowbar on the head of the Abhayram and it was immediately followed by Dhariya blows delivered by appellant no. 2. As a result of this assault, both the

victims fell on the ground in a bleeding condition. It is the case of the prosecution that at the time when the assault was going on, both the victims had tried to save themselves by running away and in the process, their loin cloth (Dhoti) had got loosen and their chappals had also come out of their feet. However, the victims could not run for safety and they had fallen down in the field itself. It is the case of the prosecution that Cheharji Ramsinh resident of Amrajina Muvada, who had been to the temple for Darshan, saw the deceased and Abhayram lying in the field in profusely bleeding condition. He, therefore, went up to them and on inquiry Abhayram told him that they were assaulted by the appellants and that he should go to the village and summon some help. Cheharji rushed to the village and he contacted Balvantsinh Vakhatsinh Chauhan and apprised him of what had happened at the temple. Balvantsinh called some people from the village and in response to that Kalubhai and Kantibhai Mohanbhai came there. They also went to the field and saw two persons lying in the field. Abhayram asked Balvantsinh to remove them to the hospital for treatment. Balvantsinh therefore, managed to get a tractor from one Ibrahimbhai and removed the injured first to the Government hospital at Dehgam. Since, the deceased had already succumbed to his injuries, Abhayram alone was given some treatment at Dehgam hospital and, thereafter, he was referred to the Civil Hospital at Ahmedabad. After lodging the injured person at Dehgam hospital, Balvantsinh went to the Police Station and gave a complaint in respect of the present incident which was recorded by the Police Sub Inspector, Dehgam Police Station.

2.2. On receipt of the information, the Police registered offence at C.R. No. I 184/1993 and commenced usual investigation and in the course of the same recorded statements of various persons who were acquainted with the facts of the case; drew panchnamas of inquest; scene of offence; clothes of the deceased etc., and also sent dead body for autopsy. The appellants were arrested. It may be noted here that appellants nos. 1 and 2 have also received injuries in this incident and they had lodged complaint against the deceased and Abhayram for causing them injuries. Appellants nos. 1 and 2 had approached the police of Dahegam Police Station in the morning of the incident and had informed the police that they would first go to the hospital for receiving treatment and thereafter they would come back to the police. When they again reached the police station, they were arrested. Thus, appellants nos. 1 and 2 were arrested on 8th July, 1993 and appellants nos.

3 and 4 were arrested on 10th July, 1993.

2.3. At the end of the investigation, the Investigating Officer submitted charge-sheet in the Court of the concerned Judicial Magistrate First Class, who in turn committed the case to the Court of Sessions as offences u/Ss. 302 and 307 of the IPC are exclusively triable by the Court of Sessions.

3. At the trial, the Ld. Addl. Sessions Judge, Ahmedabad [Rural] framed charge against the appellants which is at Exh. 2 on 9th February, 1994 for alleged commission of offences made punishable u/Ss. 302, 307, 120B and 34 of the IPC. Appellants pleaded not guilty to the charge and claimed to be tried.

4. At the trial, the prosecution relied on oral as well as documentary evidence. In support of its case the prosecution examined P.W. 1 - Balvantsinh Vakhatsinh Chauhan Exh. 14, P.W. 2 - Abheraj Janardandas Exh. 17, P.W. 3 - Cheharji Ramsing Exh. 18, P.W. 4 - Himatlal Chhaganlal Exh. 19, P.W. 5 Bharatkumar Chhanabhai Barot Exh. 22, P.W. 6 - Kanubhai Dahyabhai Exh. 26, P.W. 7 - Dipak Champaklal Jagani Exh. 29, P.W. 8 - Dr. Rita Pravinchandra Shah Exh. 38, P.W. 9 - Rameshbhai Maganlal Mekwan Exh. 40 and P.W. 10 Vrajlal Bhavjibhai Exh. 42. Over and above this, the prosecution also placed reliance on the complaint, inquest panchnama, panchnama of scene of offence, map of scene of offence, post mortem notes, etc. After recording of the oral evidence the learned trial Judge put all the incriminating circumstances appearing in the evidence to the appellants while recording their further statements under Section 313 of the Code of Criminal Procedure. It appears that no specific defence has been pleaded by them. However, they have stated that on account of the disputes going on between the parties in respect of land they have been falsely implicated in the present case.

4.1. The learned trial Judge, at the end of the trial, found that the prosecution had been successful in establishing the guilt against all the appellants and hence the appellants were convicted and sentenced to suffer imprisonment, details of which have already been narrated above.

5. In this appeal learned advocate Mr. Nitin Amin appearing for all the appellants has submitted that the judgment and order of conviction and sentence passed by the learned trial Judge are erroneous in as

much as the prosecution has not been able to prove the guilt of the appellants beyond any reasonable doubt. He has further submitted that the prosecution has suppressed material facts and in particular the origin of the incident and, therefore, the appellants deserve to be acquitted. He has also submitted that the prosecution's evidence suffers from discrepancies on the vital aspects of the case and that renders the prosecution case very much doubtful. He has further submitted that the prosecution has not explained the injuries suffered by appellant no. 2 and for that reason alone it should fail. Lastly he has submitted that this appeal is required to be allowed.

5.1. As against that, Mr. S.S. Patel, Ld. APP appearing for the respondent - State has supported the judgment and order of the trial Court and has submitted that considering the evidence on record of the case, it becomes very clear that the appellants on the date of incident had committed offence u/S. 302 of the IPC by causing death of Pujari of the temple, namely Shri Janardan Vasudev and also offence u/S. 307 of the IPC for attempting to commit murder of prosecution witness Abhayram Gurujanardan and, therefore, their conviction by the trial Court for the said offences is just and proper. He has further submitted that some minor discrepancies in the case of prosecution would not render its case doubtful and no benefit thereof should go to the appellants. Lastly he has submitted that this appeal does not have any merit and it is required to be dismissed.

6. With a view to reappreciate the entire evidence and the submissions made by the learned advocates appearing for the parties, we have carefully gone through the record of the case and have given out thoughtful consideration to the same.

7. From the record it appears that in an incident, which took place near the temple situated on the outskirts of village Amrajina Muvada in Dahegam Taluka, the Pujari of the temple lost his life; whereas his follower received injuries. It also appears from the record that the incident had taken place due to a dispute relating to agricultural land bearing survey no. 515 also situated on the outskirts of the said village. The incident had taken place at about 8.30 a.m. Prosecution witness no. 1 Balvantsinh Chauhan has stated in his evidence that he is a resident of village Harkhajina Muvada and in the morning at about 9.30 he was standing near the flour mill of his younger brother. At that time

Cheharji Ramsing came there and informed him that the deceased and P.W. Abhayram were lying in injured condition in the field near the temple. He was also informed that appellants nos. 1, 2 and 3 had caused injuries to those people. He, therefore, in the company of Kalusinh Babuji and Kantibhai Mohanbhai went to the place where the injured persons were lying. On reaching the spot he found that the deceased was lying in unconscious condition but P.W. Abhayram was conscious and, therefore, he asked him what had happened and the injured informed that the appellants had assaulted them. He thereafter managed to get tractor from one Ibrahim and tried to remove the injured persons to Government hospital at Dahegam. Deceased Janardan, died on way to the hospital due to the injuries sustained by him. Abhayram was attended by the Medical Officer attached to the said hospital. This witness has further stated that after removing the injured to the hospital he went to Dahegam Police Station for lodging the complaint. In the cross-examination he has been confronted with the complaint given by him at the Police Station and has been asked whether in the complaint he had stated that witness Cheharji had informed him that both the injured persons were lying in unconscious condition in the field. He was also asked that in the complaint he had not stated that Abhayram had told him that the appellants had caused them injuries with Dhariya and crowbar. The witness has, however, denied that he has not stated so in the complaint. He has also denied the facts suggested by the defence that when he went to the place of incident, the deceased was lying on the cot. He has further stated in the cross-examination that Dahegam is at a distance of about 7.00 KMs. from the scene of offence and that they had reached Dahegam after 11.0 a.m. He has also admitted that the police station is very near to the hospital where the injured persons were lying. He has also admitted that immediately after admitting the injured persons in the hospital he had gone to the police station. According to him, it was around 12.30 when they reached Dahegam. He has, however, denied the suggestion made by the defence that they had first cooked up a story and then given complaint at about 3.00 p.m. in the police station. He has stated in the cross-examination that he had no idea about the land dispute between the parties.

7.1. P.W. 2 - Abhayram is the only eye witness to the incident. According to him, in the morning of 8th July, 1993 the appellants had gone to the field bearing survey no. 514 belonging to the deceased. They were armed with Dhariya and crowbar. Appellants

nos. 1, 2 and 4 were having Dhariya, whereas appellant no. 3 was having crowbar. He has further stated in examination-in-chief that after entering the field the appellants started to destroy the Bajra crop. The deceased and he therefore went to persuade the appellants not to behave in that fashion and not to cause damage to the crop. However, they got enraged and commenced assaulting both of them. He has stated that appellant no. 1 aimed Dhariya blow on the head of the deceased, which fell on his back. Immediately thereafter appellant no. 4 gave a Dhariya blow on the head of the deceased, as a result of which he was seriously wounded. He has also stated that he tried to intervene and he was assaulted by appellant no. 3 with an crowbar and appellant no. 2 with Dhariya and he also received serious injuries. Both of them tried to run away from the place and in the process their Chappals and the Dhoti (loin cloth) came off and they were lying in the field. He has also stated that they could not run further and fell down in the field itself. When Balvantsinh and others came, they were removed to the hospital. According to this witness, the motive for assault was that about 3 months prior to the present incident, the deceased had purchased the field bearing survey no. 515 and had cut a babul tree standing in the said field, which was objected to by the present appellants, resulting into an enmity between them.

7.2. In the cross-examination of this witness it has come out that the deceased had several litigations with the uncle of the present appellants, namely Punaji Sukhaji. It has also been brought out that in respect of cutting of the babul tree, a case was filed against the deceased by the appellants. He has also admitted that with regard to part of the field bearing survey no. 515 which was mortgaged with the appellants, a dispute between them was pending in the Civil Court in a suit which was filed by the appellants. This witness has admitted in the cross-examination that in his police statement he had stated that the deceased had received serious injuries and he had fell down on the cot near the temple. The defence has also suggested to him that it was the deceased and he who had gone with Dhariya and stick to the field of the appellants where they were working and the deceased had caused injury to appellant no. 1 by means of Dhariya and in that melee the deceased had fallen down on the plough, which had caused him injuries. Of-course this suggestion has been denied by the witness.

7.3. P.W. 3 - Cheharji Ramsing has stated

that he had gone to have a Darshan at the temple and he saw the injured persons lying there. He was informed by the younger Maharaj that they were assaulted by the appellants. He, therefore, went and informed Balvantbhai, who removed the injured persons to the hospital. In the cross-examination he has been confronted with his police statement to show that in the police statement he had stated that the elder Maharaj Janardan was lying on the cot near the temple and the younger Maharaj was also lying in a bleeding condition.

7.4. P.W. 4 - Himatlal Chhaganlal is panch of scene of offence. His evidence does not through much light on the prosecution case except that in the field where the incident is alleged to have taken place one Dhoti and Chappals were recovered. In the cross-examination he has admitted that only one Dhoti was recovered from the field. He has also admitted that if the panchnama contained a statement to the effect that there were two Dhoties, the same was wrong.

7.5. P.Ws. 5 and 6 are panchas but they have not supported the prosecution and hence there is no need to deal with their evidence.

7.6. P.W. 7 - Dr. Dipak Champaklal Jagani, Medical Officer, who has produced post mortem notes of the autopsy of the deceased Janardan . Post mortem was carried out by one Dr. Choudhary, who at the time of trial had already migrated to America with his family and was not available for giving evidence. This witness has, however, stated that he was working with Dr. Choudhary and he was fairly acquainted with his hand writing. After referring to the post mortem notes the witness has referred to the injuries sustained by the deceased, which have been adequately described in the evidence as well as post mortem notes. He has also produced the medical certificate of the injuries suffered by Abhayram. From the examination-in-chief of this witness, it appears that both the deceased as well as the injured person had sustained injuries mainly caused by hard and blunt substance and so far the deceased was concerned, he had suffered only one incised wound which could be caused by sharp cutting instrument. So far Abhayram is concerned, he has not suffered any such injury. The history of incident recorded in the medical certificate of Abhayram showed that it was an assault with Lathi. He has also produced injury certificates of appellants nos. 1 and 2. Appellant no. 1 had suffered three injuries, out of which two injuries were on the right parietal region, whereas the 3rd one was on the right shoulder and

appellant no. 2 had received two injuries, namely on the left hand wrist and on the right side of forehead. As per the medical certificate these injuries could be caused by hard and blunt substance like Lathi. In the history of the patient it has been stated as assault with Dhariya and Lathi. The post mortem notes of deceased have been produced at Exh. 30 which shows the cause of death due to haemorrhage due to head injury and skull fracture caused by hard and blunt weapon.

7.7. P.W. 8 - Dr. Rita Shah, at the relevant time was attached to the Civil Hospital at Ahmedabad. She has stated that on 8th July, 1993 at about 2.30 p.m. a patient, namely Abheram Gurujanardan was referred to by the Medical Officer of Dahegam and on examination it was found that he had sustained seven injuries. These injuries have been adequately described in the evidence of this witness. According to her, all these injuries could be caused by hard and blunt substance like a stick. She has also stated in the cross-examination that Abheram was treated as outdoor patient and after the treatment he was allowed to go home.

7.8. P.W. 9 - Rameshbhai Maganbhai Mekwan is the P.S.I. attached to Dahegam Police Station and he has stated that on 8th July, 1993 at about 3.0 p.m. he had received the complaint from Balvantsinh Vakhatsinh regarding the murder of deceased. He, therefore, commenced the investigation and recorded statements of various persons and drew panchnamas. This witness has stated that two appellants had been to the police station and they expressed their desire to go to the hospital first to receive treatment and thereafter they went to the hospital and when they came back they were arrested. Through this witness certain contradictions in the evidence of other witnesses have been proved and brought on record.

7.9. P.W. 10 - Vrajlal Bhavjibhai is the map drawer and he has produced the map of scene of offence which is taken on record at Exh. 44.

8. The aforesaid evidence clearly shows that though the incident in question has taken place in the morning of 8th July, 1993 on the outskirts of village Amrajina Muvada, the prosecution has not come out with the true facts as to how the incident started and at what place. This doubt is created because initially, as can be seen from the complaint of Balvantsinh, Chehraji informed Balvantsinh that two persons were lying in the field near the temple in unconscious condition and it was

appellants nos. 1 and 2 who had caused them injuries. However, Balvantsinh while giving evidence in the Court has tried to suggest that when he went to the scene of offence, Abhayram was very much conscious and upon inquiry, he had narrated the incident to him to the effect that the appellants had assaulted his Guru Janardan and him by means of Dhariya and crowbar and caused them injuries. This is not in consonance with what is being reflected from the complaint. If the complaint shows that the other person Abhayram was also lying unconscious, he could not have given such information to Balvantsinh. Not only that but it is also clear from the complaint that when Chehraji contacted Balvantsinh he gave names of only appellants nos. 1 and 2. It is, therefore, very surprising that in the evidence Balvantsinh has tried to implicate even the other appellants.

8.1. It may also be noted here that the earlier version of the prosecution witnesses before the police was that on account of receiving serious injuries the injured Pujari Janardan was lying on the cot, which was very near to the temple and the place of incident appears to about 300 ft. away from this place. Not only that but it also appears from the record that witness Abhayram was sitting near the cot when Balvantsinh and others came there. However, with a view to show that the assault had taken place in the field itself, an attempt has been made by the witnesses while giving evidence to show that these people were lying in the field itself in seriously injured condition. Though the panchnama of scene of offence is drawn by the police, it does not anywhere indicate any signs of any fight having taken place in the field. The prosecution's allegation is that the appellants were destroying the Bajra crop. No such damage caused to the said crop has come to the notice of panchas. It may also be stated here that according to the witness Abhayram Dhoti worn by both his Guru as well as himself had come off and they were lying in the field itself. However, only one Dhoti is recovered from the field and that too it does not carry any blood stains. It may be remembered that the case of the prosecution is that when the assault took place their clothes were soaked with blood oozing from the injuries sustained by them. The prosecution has tried to suggest that due to the rain the blood on the clothes as well as on the ground got washed away. However, rain water would not completely wipe off the blood and some traces would certainly remain at the place. It is, therefore, very strange that when such heavy scuffle or fight had taken place in the field of the deceased no signs thereof have

come to the notice of the Investigating Officer. It, therefore, becomes very doubtful as to whether the incident had actually occurred at the place which is being suggested by the prosecution.

8.2. It may also be noted that the map of the scene of offence clearly shows the spot of the incident which is very near to the land, which is held by the appellants. It is, therefore, quite possible that attempt has been made by the prosecution witnesses to slightly shift the scene of offence to take it to the field of the deceased. The other factor that can be kept in view is that to make a show that the assault had taken place in the field of the deceased, the prosecution witnesses have stated that the deceased and the injured witness were lying in the field. However, in the version before the police, it appears that the deceased and injured Abhayram were not lying in the field, but the deceased was lying on the cot, whereas Abhayram was sitting near the cot when they received aid. All these factors create a great suspicion with regard to the truthfulness of the prosecution witnesses to determine the question as to where the incident took place.

8.3. This question, if again is examined in the light of other evidence, it becomes more doubtful and it makes it more difficult for us to ascertain the correct scene of offence. It is in evidence that appellant no. 1 had sustained three injuries, two being on the right side parietal region and one on the shoulder and appellant no. 2 had sustained one injury on the head and other on the hand. These injuries appear to have been caused during the same transaction. However, despite efforts made on behalf of the defence the prosecution witnesses have not tried to explain the injuries caused to the appellants nos. 1 and 2. It is the case of appellants, as can be seen from the cross-examination of P.W. Abhayram that it was the deceased and Abhayram who had gone to the field of appellants with Dhariya and Lathi to belabour them and it was at that time that the incident in question took place. One, therefore, fails to know that which party was the real aggressor and where the incident took place. Moreover, no explanation with regard to the injuries sustained by appellants nos. 1 and 2 is forthcoming. It is, therefore, quite possible that there is some substance in the suggestions made by the defence that it was the deceased and Abhayram who had first gone to the field of the appellants armed with Dhariya and Lathi. The documentary evidence in the form of medical certificates of both the injured appellants shows that

they have suffered injuries with Lathi and Dhariya. The other injuries reflected in their respective certificates also indicate that the injuries have been caused by hard and blunt substance. As against that, the testimony of prosecution witnesses with regard to the injuries suffered by the deceased as well as witness Abhayram is not in consonance with the medical evidence. All the injuries suffered by the deceased except one appear to have been caused by hard and blunt substance like Lathi; whereas only one injury is by sharp cutting instrument. Despite the allegations that the three appellants out of four, used Dhariya and only one had crowbar. Thus, the medical evidence brought on record is also not in consonance with the oral evidence. When this is the state of affairs, it becomes doubtful as to who was the first assailant and whether prosecution witnesses were telling the whole truth. When such question arises and when the things are not very clear and when it is quite possible to hold that it could be the deceased and injured witness who could have been the assailants, the benefit of that doubt should go to the appellants. It can also be stated that the deceased and witness Abhayram were the aggressors and appellants were not and the incident took place in their field. If that be so, in this case it can very well be said that it was the deceased and Abhayram had gone to the field of appellants while they were working in their field and had started the assault on them and the appellants while exercising right of private defence of the property as well as self defence had caused them these injuries.

9. In view of the aforesaid discussion, we will now be required to find out whether the offence u/S. 302 of the IPC has been committed or some lesser offence and if yes, by whom and whether all the appellants could be saddled with the liability of committing the said offence by virtue of section 34 of the IPC. As we have found that the origin of the incident is suppressed by the prosecution, it is not possible for us to decide who was the aggressor and in that view of the matter and when it is quite possible that the appellants had a right of private defence of the property as well as self defence, they were entitled to retaliate with a view to save their property and selves. If this be so, there is no scope for holding that there was a common intention on the part of all the appellants to commit murder of the deceased and cause injuries to witness Abhayram and in furtherance of that common intention, the aforesaid incident had taken place. If section 34 of the IPC does not come into play, then every individual appellant would be responsible for his or her individual acts. It appears

from the injuries which have been suffered by appellant no. 1 that he was required to save himself from the assault of the deceased and witness Abhayram and he and appellant no. 4 were entitled to defend their properties. However, considering the injuries that have been caused to the deceased as well as Abhayram, it clearly appears that more force than that was necessary for the aforesaid purpose was used by them. In other words, both the appellants appear to have exceeded the right of private defence of property as well as their person. In that view of the matter, their case would not fall u/S. 302 of the IPC, but it would be covered under Exception 2 of section 300 of the IPC and it would be an offence punishable u/S. 304 Part-I of the IPC.

9.1. So far appellants nos. 2 and 3 are concerned, the evidence is very clear that they have not caused any injury to the deceased and the allegation against them is causing injuries to witness Abhayram. So far appellant no. 3 is concerned, he is alleged to have given only one blow with crowbar, whereas appellant no. 2 is alleged to have given more than one blow with Dhariya. Though the injuries sustained by witness Abhayram are all contused lacerated wounds, which can be caused by hard and blunt substance; he has stated that he was not sure which part of Dhariya was used by appellant no. 2. Witness Abhayram has, however, not received any serious injury nor has he sustained any fracture nor was he hospitalised for the treatment. The injuries were simple injuries and, therefore, both the appellants, namely appellants nos. 2 and 3 could at best be held liable for causing simple hurt by means of dangerous weapons and they could at the most be held liable for committing offence u/S. 324 of the IPC. As a result of this, we are not in agreement with the finding given by the trial Court with regard to the appellants having committed the offence made punishable u/Ss. 302 and 307 read with section 34 of the IPC. We, therefore, quash and set aside the said finding and the sentence of life imprisonment; instead we substitute the conviction of appellants nos. 1 and 4 for offence u/S. 304 Part-I and sentenced them to suffer RI for nine years. We also convict appellants nos. 2 and 3 for offence u/S. 324 of the IPC and sentenced them to suffer RI for one year. The sentence with regard to imposition of fine will remain unaltered.

9.2. From the record it appears that appellants nos. 1 and 4 have remained in jail for more than nine years. Thus they have already served out their sentences and therefore they are directed to be released

forthwith, if not required for any other purpose and also subject to payment of fine.

9.3. So far appellant no. 3 is concerned, he is also directed to be set at liberty forthwith. So far appellant no. 2 is concerned, she is released on bail during the pendency of this appeal vide order dated 18th October, 1995. It appears from the record that she has already remained in prison for 1 year, 3 months and 13 days. She is, therefore, not required to surrender to the prison. Her bail bond in that event stands cancelled.

10. In the result, the appeal is partly allowed. The order with regard to the disposal of the Muddamal passed by the trial Court remains as it is.

[M.H. KADRI, J.]

[AKSHAY H. MEHTA,J.]

* Pansala